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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Governance & Constitution Committee**
held on Monday, 1st December, 2008 at Committee Suite 2&3, Westfields,
Middlewich Road, Sandbach, Cheshire CW11 1HZ

PRESENT

Councillor A Ranfield (Chairman)
Councillor D Topping (Vice-Chairman)

Councillors M Asquith, D Cannon, R Cartlidge, Mrs S Jones, A Kolker,
Mrs G Merry, A Moran, R Parker, R Walker, R West and P Whiteley
In attendance: Councillor Mrs L Smetham

Officers present

Mike Flynn – Governance Lead Officer
Julie Openshaw – Interim Monitoring Officer
Brian Reed – LGR Governance Group
Kate Khan – Solicitor Macclesfield Borough Council
Daniel Dickenson – Solicitor Cheshire County Council

45 APOLOGIES FOR ABSENCE

An apology for absence was received from Councillor S Bentley.

46 DECLARATIONS OF INTEREST

Councillor R Walker declared a personal interest only in respect of Agenda Item 8: Cheshire East Independent Remuneration Panel in that he knew one of the people concerned. In accordance with the Code of Conduct he remained in the meeting during consideration of this item.

47 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public present.

48 MINUTES OF PREVIOUS MEETING

The Minutes of the Meeting held on 3 November 2008 were approved as a correct record.

49 ADOPTION OF COUNCIL PROCEDURE RULES

The Interim Monitoring Officer submitted a paper setting out proposed recommendations to Council on the Council's Procedure Rules that will apply with effect from 1 April 2009.

It was noted that the Council would need to adopt a Constitution to take effect on 1 April 2009 to serve the purposes of a Unitary Local Authority. Members considered a schedule of key issues identified by officers. Some of the issues had been subject to Member comment or discussion during the Shadow Council's life, whilst others were included by way of a reminder of key provisions of the Rules.

Members also considered an appendix that set out the current Procedure Rules with minor amendments such as the removal of references to "Shadow Council" and "Interim Monitoring Officer".

During the debate members stressed the importance of decision-making being transparent and clarification was sought on asking questions at the Council meetings and the exercise of Chairman's second or casting vote. Members also referred to rule 14.2b and whether the requirement for a motion signed by at least 8 members of the Council would preclude minority Groups from seeking rescission of earlier resolutions.

RESOLVED:

(1) Council is recommended to adopt the draft Council Procedure Rules, contained in Appendix B to the report, which will take effect on 1 April 2009, subject to the following changes:

Rule 31.6: this draft Rule to be amended to the effect that the Chairman of a Committee or Sub-Committee shall have a second or casting vote, but that he/she will not be obliged to use it. A note will be added to the Rule indicating that, where there is an equality of votes, and where the Chairman does not use his/her second or casting vote; the motion in question will be lost.

Rule 19: this draft Rule to be amended so that the Constitution will identify the Committees and Panels in question, and their Membership sizes, but without showing the names of individual Committee/Panel Members.

Rule 19: this draft Rule to be amended to exclude reference to the Independent Remuneration Panel.

Rule 19: this draft Rule to be amended to include the Health and Adult Social Care Scrutiny Committee, together with the number of Members of it.

Rule 44.6: this draft Rule to be amended to require that, in circumstances where agreement is reached that an urgent Key Decision should not follow the requirements of Rule 44.5, notification of such decision is provided electronically to all Members of the Council.

Rule 49.1: this draft Rule to be clarified to indicate that hard copies of agenda papers will be provided to Members of committees/executive bodies.

Rule 54.1: This draft Rule to be modified to the effect that, only where suspension of a Procedure Rule is moved and carried, will the Procedure Rule be suspended.

Appendix 3, paragraph 11: the draft Appendix to be modified to provide for the mover of an amendment to have a right of reply before the mover of the original motion sums-up, as follows:

“The mover of the motion shall have a right to reply at the close of the debate on the motion, immediately before it is put to the vote. If an amendment is moved, the mover of the original motion shall have a right of reply at the close of the debate on the amendment but shall not otherwise speak on it. The mover of the amendment shall have a right of reply to the debate on his/her amendment immediately before the mover of the original motion exercises his/her right of reply at the close of the debate on the amendment.”

Appendix 5: the draft Appendix to be modified to the effect that there will be no requirement for Council to approve reserve lists of Members for each political group who will act as reserve Members for each Committee and Sub-Committee, but that any reserve Member will simply be required to notify the Chairman of the Committee or Sub-Committee at the beginning of the meeting in question.

(2) The Interim Monitoring Officer be authorised to produce suitable wording, and to make such consequential amendments to the draft Procedure Rules as she considers are necessary to give effect to the recommended changes.

50 DELEGATION OF DECISIONS TO INDIVIDUAL MEMBERS

The Interim Monitoring Officer submitted a paper providing further information requested at the last meeting on the delegation of decisions to individual members and the powers that may be contained in the Constitution to allow urgent decisions to be made by individual members.

It was noted that legal advice had been sought and indicated there would be a real risk of legal challenge to decisions made if the Council's procedures were altered so as to give additional prominence to the role of individual Members in the urgent decision-making process. In practice such decisions were relatively infrequent and the process used only where it was not possible for a Committee decision to be made.

Members noted that there were ongoing discussions with the Council's political leadership on the model of Executive Arrangements which they would wish to see in operation in respect of Cabinet decisions after 1 April 2009. One option the Cabinet could request the Committee to explore was individual Cabinet Member decision-making, as permitted by the Local Government Act 2000. If approved, such arrangements would ensure that officer urgency powers do not need to be exercised in all cases where urgent decisions need to be made.

RESOLVED – that the report be noted.

51 LICENSING COMMITTEE - STRUCTURES, MEMBERSHIP AND DELEGATIONS

The Interim Monitoring Officer presented a paper setting out proposals for the formation of a Licensing Committee for Cheshire East Council, both as a Shadow Committee prior to 1 April 2009 and as a fully operational Committee after that date. The Council would be asked to appoint members to the Licensing Committee at its meeting on 9 December 2008.

Members considered proposals relating to the structure of the Licensing Committee based on the requirements contained in the Licensing Act 2003 and the Gambling Act 2005. Consideration had also been given to the current practices in operation in existing District Authorities and the Cheshire East Licensing Group had recommended the proposals.

Attached to the paper was a list of Licensing functions which are the responsibility of the Council together with lists of Delegation of Functions under the various Acts, a draft statement of Licensing Policy, a proposed Statement of Principles and also a proposed Scheme of Delegation in relation to the general Licensing functions.

During the debate members referred to the arrangements for the establishment of one or more sub-committees and expressed a preference for there to be five members on any Sub Committee. They also debated the proposed the structure and membership of the Licensing Committee and recognised the geographical differences and expertise in the Cheshire East area. It was noted the training requirements for members appointed to a Licensing Committee would have to be met to ensure that a clear robust scheme of delegation and fully operational Licensing Committee was in place prior to 1 April.

RESOLVED - to recommend to Council at its meeting on 9 December 2008 that it considers:

1) the creation of a Licensing Committee on the following terms:

- i)** A full Licensing Committee of fifteen Members (with a quorum of eight) on a politically proportional basis, i.e. Conservatives 11; Liberal Democrats 2; Labour 1; Independent Group 1 ;

- ii) That the Licensing Committee then establishes Sub-Committees of three Members drawn from the full Committee to deal with matters under the Licensing Act 2003 and the Gambling Act 2003;
 - iii) That Sub-Committees of five Members (with a quorum of three) drawn from the full Committee (of which at least one shall, subject to availability, be the Chairman or Vice Chairman of the full Committee) are established on an ad hoc basis to deal with 'general' licensing matters;
- 2) the requirement of political proportionality under section 15 of the Local Government and Housing Act 1989 is waived in relation to the sub-committee established under iii) above;
 - 3) to delegate to the Licensing Committee those licensing functions which are the responsibility of Council as set out in Appendix 1, subject to the proviso that before any Councillor who is a member of the Licensing Committee can attend a meeting and participate in the determination of an application or appeal by any individual or body, that Councillor must have attended a suitable training course dealing with the quasi-judicial nature of the role of the Committee; and
 - 4) authorising the Interim Monitoring Officer to make such consequential changes to the Constitution as she considers appropriate to give effect to the decision of Council in relation to 1) above.

52 CHESHIRE EAST INDEPENDENT REMUNERATION PANEL

The Governance Lead Officer updated Members on the appointment of the Independent Remuneration Panel for Cheshire East Council and sought approval to its composition and related operational matters.

The Chairman and spokespersons had met on 18 November with four current Independent Remuneration Panelists who had volunteered to join the Cheshire East Panel and a fifth Panelist had subsequently been identified. The Panel would commence its work immediately to meet deadlines for producing a report and recommendations for consideration by this Committee and adoption by the Council.

The Committee then considered the term of office and Chairmanship of the Independent Remuneration Panel together with the payment of travel and out of pocket expenses to the Remuneration Panel Members when carrying out their duties, and whether any further allowance should be paid. There was merit in enabling Panel Members to attend elected Member development events appropriate to their work, as this would assist the Panel's understanding of elected members' roles and responsibilities in the new Authority.

Members noted that any views they would wish to make known to the Panel should be raised in the first instance with the Governance Lead Officer who would be providing support to the Panel.

RESOLVED –

- 1) To approve the appointment of the Cheshire East Independent Remuneration Panel with the following membership:

Mr David Routs (Cheshire Panel)
Mrs Christine Crowe (Crewe and Nantwich Panel)
Mrs Jan Charles (Congleton Panel)
Mr Peter Foden (Congleton Panel)
Professor Michael Burdekin (New Member)

- 2) The Panel be requested to determine its Chairmanship from within its membership;
- 3) The period of office for Panel Members be three years;
- 4) That an allowance of £30 per meeting together with travel and out of pocket expenses be paid to Panel members; and
- 5) That Panel Members be permitted to attend elected Member Development events appropriate to their work.

53 OFFICER CODE OF CONDUCT

The HR Joint Transition Group submitted a paper that enclosed a proposed Code of Conduct for Employees of the new Cheshire East Council. The Government had recently issued a revised draft Officer Code of Conduct for consultation. It was noted that it may be some time before any final document is produced by the Government. It was suggested that in the meantime the Council should agree its own Code, which can be reviewed if necessary when any final national framework is issued. Members noted that Schools will have their own Codes of Conduct.

The Staffing Committee had considered the draft Code of Conduct at its meeting held on 27 November 2008, as staff appointments were beginning to be made, and it was vital that there is a Code of Conduct for Officers in place.

This key document would ensure the good governance of the new Council and provide clear direction to employees on the standards of Conduct expected of them. It would be necessary for this Committee to recommend to the Council that it considers the adoption of an Officer Code of Conduct, its immediate inclusion in the Shadow Council's Constitution and, thereafter in Cheshire East Unitary Council's Constitution with effect from 1 April 2009.

RESOLVED – to recommend that the Council:

- 1) adopts the Officer Code of Conduct appended to the Report (Noting that the Core Values for Cheshire East as a whole are still in draft and will require Cabinet approval in January 2009);
- 2) agrees that the Officer Code of Conduct will take effect immediately and will apply to all officers appointed by the Shadow Council;
- 3) agrees that the Officer Code of Conduct will continue to have effect, and will apply to all officers employed by Cheshire East successor authority on 1st April 2009 and thereafter;
- 4) agrees that the Officer Code of Conduct will be included immediately in the Shadow Council's Constitution and, with effect from 1st April 2009, in Cheshire East successor authority's Constitution; and
- 5) authorises the Interim Monitoring Officer to make such consequential amendments to the Constitution as she considers are necessary to give effect to the decision of Council.

54 CHESHIRE EAST WORK PLAN

The Interim Monitoring Officer submitted an updated work plan detailing the timescale of reports to be brought to the Committee and the current status of each work area. Members then commented on various aspects of the Work Plan, and in particular the timetable of meetings. The Member/Officer Relations Protocol would be submitted to the January 2009 meeting and the report of the Outside Bodies task group would be submitted to the February 2009 meeting.

RESOLVED - That the Committee note the current detail of the Work Plan as referred to at the meeting.

The meeting commenced at 2.00 pm and concluded at 4.25 pm

Councillor A Ranfield (Chairman)

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